



W.P. Nos.39969 – 39981/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.04.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 39969 TO 39981 OF 2016

AND

W.M.P. NOS. 34029 TO 34035 AND 34038 TO 34041 OF 2016

W.P. NO. 39969 OF 2016

S.Gandhimathi

.. Petitioner

- Vs -

1. Government of Tamil Nadu
Rep. By its Secretary
Rural Development Department
Fort St. George, Chennai 600 009.

2. The Commissioner
Rural Development & Panchayat Raj Dept.
Panagal Building, Saidapet
Chennai 600 015.

.. Respondent

W.P. No.39969 of 2016 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the entire records which culminated in the proceedings bearing reference No. Na.Ka.No.71429/2015/E3 dated 07.04.2016 on the file of the 2nd respondent,



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quash the same and consequently direct the 2nd respondent to implement the order passed by the Government in G.O. Ms. No.38, Rural Development & Panchayat Raj Dept., dated 03.05.2013 in favour of the petitioner so as to enable the petitioner to get regular time scale of pay in the cadre post of Record Clerk or Office Assistant as the case may be within a time limit to be stipulated by this Court.

For Petitioners : Mr. S.Mani

For Respondents : Mr. R.Ramanlal, AAG, assisted
By Ms. S.Anitha, Spl. GP

COMMON ORDER

In all these writ petitions, challenge is made to the order of rejection passed by the 2nd respondent, in not granting the benefit of time scale of pay and regularisation as granted to the petitioners vide G.O. Ms. No.38, Rural Development and Panahayat Raj Dept., dated 03.05.2013, which is put in issue.

2. The petitioners in all the petitions had joined as Works Assistant on various dates in the Rural Development Department on daily wage basis and were posted at the respective places of work. It is further averred that several



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persons had joined the daily wage post during the year 1988 to 1997 throughout the State in various Districts as Works Assistant and for bringing those persons working on daily wage basis into the regular establishment by granting them time scale of pay, G.O. Ms. No.38, Rural Development and Panchayat Raj Dept., dated 03.05.2013 was issued in and by which the daily wage Works Assistant are to be brought into regular service and the beneficiaries of the Government Order were included in the annexure to the said Government Order, wherein the names of the petitioners are also found.

3. It is the further averment of the petitioners that the Government Order was partially given effect to by bringing 32 persons out of 108 persons included in the annexure to the Government Order in the regular post of Record Clerk, but the petitioners were not given the benefit of the Government Order by regularising their service in the cadre post.

4. It is the further averment of the petitioners that inspite of exercising of option by the petitioners to get posted in any District in the cadre of Record Clerk or Office Assistant as the case may be, based on their qualification,



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however, the petitioners were not accommodated in the said cadre posts.

Therefore, W.P. No.4879/2014 was filed by the petitioners along with others contending that inspite of repeated representations given to the respondents, both individually and also through the Association has not yielded any result and they should be granted the benefit of time scale of pay by granting the benefit conferred under the Government Order.

5. It is the further averment of the petitioners that this Court, on 20.02.2014 disposed of the said petition with a direction to the petitioners to submit a fresh representation, which was directed to be considered by the 2nd respondent in the light of G.O. Ms. No.38, Rural Development and Panchayat Raj Dept., dated 03.05.2013. Inspite of the said direction, as the same was not complied with, Contempt Petition in Contempt Petition No.259 of 2016 was filed and during hearing of the said petition, the proceedings in Na.Ka. No.71429/2015/E3 dated 7.4.2016 was produced, said to have been passed by the 2nd respondent rejecting the claim of the petitioners on the ground that the petitioners did not complete 10 years of service on daily wage basis, which is against the spirit of G.O. Ms. No.38 and while the contempt petition was



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closed recording the same, aggrieved by the said order of the 2nd respondent, the present petitions have been filed by the petitioners.

6. Learned counsel appearing for the petitioners submitted that only considering the plight of the daily wage workers, viz., the petitioners, the Government itself passed G.O. Ms. No.38, Rural Development and Panchayat Raj Department dated 3.5.2013 to bring 108 Work Assistants working on daily wage basis into regular time scale of pay without regard to the number of years of service put by them. When the Government itself has decided to relax the number of years of service and granted benefit of time scale of pay and directed to regularise the service of the petitioners and other similarly situated persons, the order of rejection passed by the 2nd respondent is beyond the competence of the 2nd respondent, more so, it also shows non-application of mind, as the relaxation granted by the Government has not been properly construed by the 2nd respondent while passing the order of rejection, which order runs contrary to G.O. Ms. No.38.



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7. It is the further submission of the learned counsel that once the Government passes an order granting certain benefit, the authorities under the Government, and in the present case, the 2nd respondent, is bound to implement the said order and has no power either to modify, vary or not give effect to the order as the Government order will prevail over any decision of order passed by an authority subordinate to the Government.

8. It is the further submission of the learned counsel that consequent to the filing of the contempt in Contempt Petition No.259/2016, on service of notice, the Government, vide letter No.14214/E-5/2014-12 dated 29.03.2016 had directed the 2nd respondent to send proposal for implementation of the order passed in W.P. No.4879/2014. However, without sending such proposal, the 2nd respondent had passed the impugned order, in stark disobedience to the order passed by the Government in G.O. Ms. No.38. Further, many persons, who have been granted the benefit of the said Government Order had also not completed 10 years of service, which stood as the basis to reject the claim of the petitioners, which clearly shows the selected rejection of the 2nd respondent, which reveals the discriminatory act



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on the part of the 2nd respondent. Therefore, it is submitted that the impugned order suffers the vice or illegality, arbitrariness and it is perverse and the same deserves to be set aside with a direction to the 2nd respondent to implement the order in G.O. Ms. No.38.

9. Per contra, learned Addl. Advocate General appearing for the respondents, while accepted the passing of G.O. Ms. No.38, Rural Development and Panchayat Raj Dept., dated 3.5.2013, however submitted that the annexure to the said order contains the persons, who have been granted the benefit, but the said grant of benefit is subject to the fulfilment of the rules and regulations pertaining to regularisation. In this regard, learned Addl. Advocate General submitted that pursuant to the Government Order, Work Assistants, who had fulfilled the criteria were absorbed in time scale of pay and their services were regularised, persons like the petitioners, who had not fulfilled the criteria, could not be absorbed. It is the further submission of the learned Addl. Advocate General that certain complaint were received against the appointment of the individuals mentioned in the Government Order, viz., the petitioners and the 2nd respondent had addressed letter



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No.16249/E1/2013-1 dated 19.7.2013 in which orders were passed by the Government to conduct enquiry and pass appropriate orders. Pursuant to the said order, upon conduct of enquiry, the non-fulfilment of the requisite criteria by the petitioners came to light and, therefore, the impugned order was passed.

10. It is the further submission of the learned Addl. Advocate General that the present impugned order has been passed only to comply with the judgment passed by this Court in W.P. No.4879/2014 dated 20.2.2014 and in the wake of the Government letter No.14214/E5/2014-12 dated 29.03.2016 and in view of the instruction of the Government, the present order having come to be passed, the said order neither lacks competence nor is in contradiction with G.O. Ms. No.38 dated 3.5.2013.

11. It is the further submission of the learned Addl. Advocate General that the relaxation granted by the Government were with regard to Rule 3(B) of the Tamil Nadu Panchayat Union Council Establishment (Qualification for Officers and Servants) Rules, 1970 and Rule 5 (b) of the Tamil Nadu Panchayat



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Union Council Establishment (Qualification and Appointment of Basic Servants) Rules, 1970 and it has not relaxed the criteria with regard to completion of 10 years of service and, therefore, the petitioners having not completed 10 years of service, have been rightly not appointed and, therefore, the said order does not suffer any perversity. Accordingly, learned Addl. Advocate General prays for dismissal of the present petitions.

12. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

13. There is no quarrel with the fact that G.O. Ms. No.38, Rural Development and Panchayat Raj Dept., dated 3.5.13 was issued along with annexure clearly revealing the persons, who are to be granted regularisation and brought within the time scale of pay. In the said annexure, the name of the petitioners find place is also not in dispute. The whole genesis for rejection of the petitioners from being granted regularisation is on account of their non-completion of 10 years of service as daily wages.



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14. Even there is no quarrel on behalf of the petitioners that they have not completed 10 years in the daily wage service. A careful perusal of the annexure to G.O. Ms. No.38 reveals that while the names of the petitioners have been shown, equally there is a clear mention that they have not completed 10 years of service as daily wage employees. Therefore, from the above it is evident that there is no misrepresentation on the part of the petitioners with regard to the length of service put in by them.

15. Conscious of the length of service put in by each of the persons, whose names have been shown in the annexure, G.O. Ms. No.38, Rural Development and Panchayat Raj Dept., dated 3.5.2013 had come to be issued. Further, a careful perusal of the said Government Order reveals that the Government invoking its powers have relaxed Rule 3 (B) and Rule 5 (b) of the respective rules and have granted the benefit to the persons, whose names have been shown in the annexure. When the Government, conscious of the status of the petitioners with regard to their qualifications and the length of service put in by them have decided to grant the benefit and had issued the



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said Government Order, citing certain complaints, it is not open to the 2nd respondent to curtail the benefit of the said Government Order to a group of individuals, viz., the petitioners, by not granting them the regularisation, when the said Government Order in G.O. Ms. No.38 still subsists. It is to be pointed out that as on date, G.O. Ms. No.38 has not been disturbed in any manner either by means of modification or amendment.

16. Be that as it may. When the Government, appreciating the plight of the daily wagers, have issued G.O. Ms. No.38, more specifically prescribing the names of the individuals, who would stand benefitted by the said Government Order as annexure to the said Government Order, without there being any modification or amendment to the said Government Order, the 2nd respondent, who is an authority, who is only empowered to execute the said Government Order, cannot sit over the said Government Order and deny the benefit to the petitioners, when the benefit had been granted to the petitioners by the Government, which is superior in authority to the 2nd respondent.



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17. Turning back to the issue at hand, the Government Order had been issued in the year 2013, which ought to have been implemented in letter and spirit by the 2nd respondent and even if the 2nd respondent had entertained any difficulties in the implementation of the Government Order, the course open to the 2nd respondent would have been to seek for necessary clarification from the Government. However, there is no iota of material to suggest that any such clarification was sought for from the Government.

18. In view of the Government Order not being implemented, representation was submitted by the petitioners and in the absence of any order being passed, W.P. No.4879/2014 was filed in which this Court had directed the respondents therein to consider the representation and pass orders. When it is the case of the 2nd respondent that the petitioners have not fulfilled the qualification, while seeking necessary rectification/modification with the Government Order, this Court ought to have been appraised of the said position and orders to the said effect ought to have been obtained. However, the order of this Court is silent on that aspect, meaning thereby, that no such submission was placed before the Court.



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19. Even after an order was visited with at the hands of this Court, the respondents therein had kept silent and only after Contempt Petition No.259/2016 was filed, after the Government had addressed the 2nd respondent vide its communication dated 29.3.2016, the present impugned orders had come to be passed. In this regard, the letter of the 1st respondent dated 29.3.2016 assumes significance and for better appreciation, the same is quoted hereunder :-

"I am to invite your attention to the references cited and to request you to implement the Government Order as ordered by Hon'ble High Court for such persons who are eligible as per guidelines.

In this regard, I am also to request you to send the proposal for amendment of the above said Government Order in respect of ineligible persons, to the Government immediately."

20. From the above, it is clear that while the 1st respondent had directed to implement the Government Order in respect of the eligible persons, however, in respect of ineligible persons, proposal was directed to be mooted out for amendment of the Government Order. This clearly shows



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that what is directed upon the 2nd respondent is that in case of ineligible persons, proposal to be mooted out for amendment, which clearly signifies that it is only the Government which could make any modification/amendment to the Government Order and the 2nd respondent was not required to pass any orders, in case it pertains to persons, who are alleged to be ineligible. However, without following the directions of the 1st respondent, the 2nd respondent had passed the impugned order, which is *per se*, perverse, illegal, arbitrary and unreasonable and beyond the competence of the 2nd respondent.

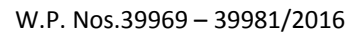
21. Further, as already pointed out above, the names of the persons for whose benefit the Government Order had been passed have been shown in the annexure to the Government Order and the qualifications and experience of the said persons were within the knowledge of the Government. Such being the case, if the Government had passed an order conferring certain benefits on some persons, the 2nd respondent is duty bound to implement the said order and if the 2nd respondent is not satisfied with some portion of the order, as pointed out by the 1st respondent, necessary amendment ought to



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have been obtained by the 2nd respondent from the Government and it is not with the power of the 2nd respondent to pass the impugned order, when the Government, the ultimate authority, had granted certain benefits to the petitioners.

22. Further, what is more intriguing is the fact that though the writ petition was filed in the year 2014 and an order was invited on 20.02.2014, however, no order was passed and only after a contempt in Contempt Petition No.259/2016 was filed, on 7.4.2014, the impugned orders have come to be passed. Even when notice was issued on the contempt, based on which the 1st respondent had written to the 2nd respondent, the said fact was not brought to the notice of the Court, but curiously the orders impugned had come to be passed rejecting the representation of the petitioners, when the petitioners had only asked the implementation of G.O. Ms. No.38. It is not within the competence of the 2nd respondent to not grant a certain benefit, which had been conferred on the petitioners by the Government and making the petitioners to run from pillar to post since 2013 is nothing but an act of administrative overreach, which cannot be permitted.



24. For the reasons aforesaid, the impugned orders passed by the 2nd respondent, which are impugned in these writ petitions are liable to be set aside and, accordingly, the orders impugned herein are set aside. The 2nd respondent is directed to pass orders regularising the services of the petitioners in the time scale of pay, whose names find place in the annexure to G.O. Ms. No.38, Rural Development and Panchayat Raj Department, dated 3.5.2013 within a period of four weeks from the date of receipt of a copy of this order.



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25. With the aforesaid directions, these writ petitions are allowed.

Consequently, connected miscellaneous petitions are closed. However, there shall be no orders as to costs.

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Index : Yes / No

GLN

To

1. The Secretary to Government
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Fort St. George, Chennai 600 009.

2. The Commissioner
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